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6 Attorneys for Defendant, **CITY OF LOS ANGELES**

7 ***FEE EXEMPT-GOV'T CODE § 6103***

8 LOS ANGELES SUPERIOR COURT

9 COUNTY OF LOS ANGELES

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11 FRANK PRECIADO,

12 Plaintiff,

13 vs.

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15 CITY OF LOS ANGELES, a government entity;  
and DOES 1 through 100, inclusive,

16 Defendants.  
17  
18

) Case No.: 19STCV12061  
)  
)

) Assigned to: Judge Mark V. Mooney  
) Department: 68  
)

) Action filed: April 5, 2019  
)

) **DEFENDANT CITY OF LOS ANGELES'**  
) **ANSWER TO PLAINTIFF'S FIRST**  
) **AMENDED COMPLAINT**  
)  
)  
)

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20 Defendant City of Los Angeles ("Defendant")<sup>i</sup> for itself and no other party, hereby answers the  
21 allegations contained within the unverified First Amended Complaint for Damages filed by Frank  
22 Preciado ("Plaintiff"), as follows:

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24 **GENERAL DENIAL**

25 1. Under the provisions of Sections 431.30(d) and (f) of the California *Code of Civil*  
26 *Procedure*, this answering Defendant denies generally and specifically each and every allegation  
27 contained in the Complaint and denies that Plaintiff has sustained any injury or loss by reason of any act  
28 or omission on the part of this answering Defendant, or the agents, servants, or employees of the City of

1 Los Angeles, and denies that Plaintiff has been damaged in the amount alleged in the Complaint or in  
2 any other amount whatsoever.

3 **AFFIRMATIVE DEFENSES**

4 **FIRST AFFIRMATIVE DEFENSE**

5 (Failure to State a Cause of Action)

6 2. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
7 barred in whole or in part in that Plaintiff fails to set forth facts sufficient to constitute a cause of action  
8 against this answering Defendant.

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10 **SECOND AFFIRMATIVE DEFENSE**

11 (Statute of Limitations)

12 3. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
13 barred in whole or in part in that the causes of action asserted in the Complaint are barred by the  
14 applicable statutes of limitations, including, but not limited to, California Code of Civil Procedure  
15 Section 340, 335.1 Cal. Gov. Code §§ 911.2, 12960 and 12965.

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17 **THIRD AFFIRMATIVE DEFENSE**

18 (Laches)

19 4. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
20 barred in whole or in part by the doctrine of laches.

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22 **FOURTH AFFIRMATIVE DEFENSE**

23 (Failure to Exhaust Administrative Remedies)

24 5. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
25 barred in whole or in part in that Plaintiff has failed to exhaust the necessary administrative and/or  
26 judicial remedies.

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1 **FIFTH AFFIRMATIVE DEFENSE**

2 (Failure to Exhaust Internal Procedures)

3 6. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
4 barred in whole or in part in that Plaintiff failed to exhaust the internal procedures that were available to  
5 resolve the claims alleged therein.

6  
7 **SIXTH AFFIRMATIVE DEFENSE**

8 (Statute of Limitations – Administrative and Judicial)

9 7. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
10 barred in whole or in part in that Plaintiff failed to file the administrative or judicial complaint(s) within  
11 the time required by law, including Government Code Section 12965.

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13 **SEVENTH AFFIRMATIVE DEFENSE**

14 (Immunity of Public Entity)

15 9. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
16 barred in whole or in part by reason of this answering Defendant's immunity from liability under, *inter*  
17 *alia*, Cal. Gov. Code §§ 815, *et seq.*, 815.2, 815.3, 818.2, 818.8, 820.2, 820.4, 820.6, 820.8, 821, 821.6,  
18 822.2 and Civil Code §47.

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20 **EIGHTH AFFIRMATIVE DEFENSE**

21 (Failure to Mitigate)

22 10. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
23 barred in whole or in part in that Plaintiff has failed to mitigate any of the damages or injuries they claim  
24 to have suffered from the acts or conduct of this answering Defendant or their representatives.

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26 **NINTH AFFIRMATIVE DEFENSE**

27 (Waiver)

28 11. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are

1 barred in whole or in part in that Plaintiff has waived and/or relinquished the claims or causes of action  
2 being asserted in this action.

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4 **TENTH AFFIRMATIVE DEFENSE**

5 (Immunity for Discretionary Acts)

6 12. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
7 barred in whole or in part in that neither a public entity nor a public employee is liable for any injury  
8 resulting from his/her act or omission which was the result of the exercise of the discretion vested in  
9 them pursuant to Cal. Gov. Code §§815.2 and 820.2.

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11 **ELEVENTH AFFIRMATIVE DEFENSE**

12 (Workers' Compensation Exclusivity)

13 13. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
14 barred to the extent that Plaintiff seeks recovery for emotional distress and/or physical injuries arising  
15 out of the normal course and scope of employment, because such claim is barred by the exclusivity  
16 provisions of the California Workers' Compensation Act and case interpreting those statutes.

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18 **TWELVTH AFFIRMATIVE DEFENSE**

19 (Avoidable Consequences Doctrine)

20 14. Without admitting that Plaintiff has sustained any damages or detriment, or that these  
21 answering defendants are liable to Plaintiff in any manner whatsoever, this answering Defendant is  
22 informed and believes and thereon alleges that Plaintiffs unreasonably failed to take advantage of  
23 preventative and corrective opportunities, thereby precluding and/or limiting Plaintiff's recovery, if any,  
24 and further, that this answering Defendant exercised reasonable care to preclude and correct the  
25 behavior complained of by Plaintiff, if any.

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1 **THIRTEENTH AFFIRMATIVE DEFENSE**

2 (Frivolous Claims)

3 15. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
4 frivolous and known by Plaintiff to be frivolous and without foundation in fact or law. Defendant is  
5 informed and believes and thereon alleges that this lawsuit is being pursued in bad faith for vexatious  
6 reasons for the purpose of harassing Defendant. Accordingly, Defendant is entitled to attorney's fees  
7 and other appropriate costs and expenses.  
8

9 **FOURTEENTH AFFIRMATIVE DEFENSE**

10 (Failure to Comply with City of Los Angeles Charter)

11 16. Plaintiff's First Amended Complaint, and each cause of action set forth therein, are  
12 barred to the extent they are based upon alleged unlawful termination of employment in that Plaintiff has  
13 failed to file an appropriate application pursuant to §1016(c) of the Los Angeles City Charter and an  
14 appropriate demand for reinstatement and claim for compensation under §1017 of the Los Angeles City  
15 Charter.  
16

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 (Comparative Fault)

19 17. The damages alleged were directly and proximately caused and contributed to by  
20 Plaintiff's negligence, and the extent of damages sustained, if any, should be reduced in proportion to  
21 the amount of said negligence.  
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23 **SIXTEENTH AFFIRMATIVE DEFENSE**

24 (Exercise of Management Discretion)

25 18. Any adverse actions taken against Plaintiff by Defendant, if any, were based upon  
26 legitimate non-discriminatory, non-retaliatory managerial reasons.

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1 **SEVENTEENTH AFFIRMATIVE DEFENSE**

2 (After Acquired Evidence)

3 19. Any adverse actions taken against Plaintiff by Defendant would have occurred any way  
4 based on Plaintiff's own misconduct.

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6 **EIGHTEENTH AFFIRMATIVE DEFENSE**

7 (Privileged Conduct)

8 20. The complaint, and each cause of action set forth therein, fails in that any purported  
9 conduct of Defendant was privileged and Defendant was justified in engaging in such conduct.

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11 **NINETEENTH AFFIRMATIVE DEFENSE**

12 (Good Faith)

13 21. At all times mentioned, Defendant acted in good faith.

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15 **TWENTIETH AFFIRMATIVE DEFENSE**

16 (Constitutional Acts)

17 22. At all times mentioned, Defendant acted in accordance with the Constitution of the  
18 United States and the Constitution of the State of California and all state and local laws relative thereto.

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20 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

21 (Unclean Hands and Unjust Enrichment)

22 23. Plaintiff's claims for relief are barred by Plaintiff's unclean hands and any additional  
23 recovery should be barred by unjust enrichment.

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25 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

26 (Res Judicata)

27 24. Plaintiff's claims for relief are barred, in whole or in part by the doctrine of res judicata.  
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**TWENTY-FOURTH AFFIRMATIVE DEFENSE**

(Collateral Estoppel)

25. Plaintiff's claims for relief are barred, in whole or in part, by the doctrine of collateral estoppel.

WHEREFORE, Defendant prays as follows:

1. That Plaintiff takes nothing by way of this action;
2. That Plaintiff's entire action be dismissed with prejudice;
3. That Plaintiff's request for attorney's fees and/or costs be denied in their entirety;
4. That Defendant be awarded their attorneys' fees incurred in this action pursuant to, *inter alia*, Cal. Government Code § 12965(b) and California Code of Civil Procedure §§ 128.5 and 128.7;
5. That Defendant recover costs incurred in this action; and
6. For such other and further relief as the Court deems just and proper.

Dated: June 12, 2019

Respectfully submitted,

MICHAEL N. FEUER, City Attorney  
JAMES P. CLARK, Chief Deputy City Attorney  
ERIC BROWN, Managing Assistant City Attorney  
SONIA M. PFLASTER, Deputy City Attorney

By: 

SONIA M. PFLASTER  
Deputy City Attorney

Attorneys for Defendant, **CITY OF LOS ANGELES**



**PROOF OF SERVICE -- (VIA VARIOUS METHODS)**  
**FRANK PRECIADO v. CITY OF LOS ANGELES, CASE NO. 19STCV12061**

I, the undersigned, say: I am over the age of 18 years and not a party to the within action or proceeding. My business address is 700 City Hall East, 200 North Main Street, Los Angeles, California 90012.

On June 13, 2019, I served the foregoing documents described as **DEFENDANT CITY OF LOS ANGELES' ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT**, on all interested parties in this action by placing copies thereof enclosed in a sealed envelope addressed as follows:

Douglas D. Winter, Esq  
McNicholas & McNicholas, LLP  
10866 Wilshire Blvd., Suite 1400  
Los Angeles, CA 90024  
T: 310 474-1582 F: 310 475-7871

*Attorneys Plaintiff*

☒ **BY MAIL** – ☐ I deposited such envelope in the mail at Los Angeles, California, with first class postage thereon fully prepaid.

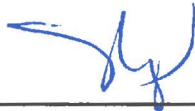
☒ I am readily familiar with the business practice for collection and processing of correspondence for mailing. Under that practice, it is deposited with the United States Postal Service on that same day, at Los Angeles, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one (1) day after the date of deposit for mailing in affidavit; and/ or

☐ **BY ELECTRONIC SERVICE:** Based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **BY PERSONAL SERVICE** – ( ) I delivered by hand, or ( ) I caused to be delivered via messenger service, such envelope to the offices of the addressee with delivery time prior to 5:00 p.m. on the date specified above.

☐ **BY OVERNIGHT COURIER** - I deposited such envelope in a regularly maintained overnight courier parcel receptacle prior to the time listed thereon for pick-up. Hand delivery was guaranteed by the next business day.

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made. I declare under penalty of perjury that the foregoing is true and correct. Executed on June 13, 2019, at Los Angeles, California.



MICHAEL PAN